

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-v-

No. 18-CR-319-LTS

SAMANTHA BATISTA,

Defendant.

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ORDER

The Court has received Defendant Samantha Batista's pro se letter, mailed on November 5, 2021, reporting an outbreak of COVID-19 at her facility, resulting in at least one death of an inmate housed in her building, and requesting a hearing and the appointment of counsel. Ms. Batista's letter also attaches a letter dated July 7, 2021, addressed to the warden of her facility, requesting compassionate release based on the "toxic mold and other chemicals" in her unit, her "long COVID symptoms," and her fears of being reinfected with COVID-19. These proffers are also the subjects of Ms. Batista's pending motion for an indicative ruling (docket entry no. 427), as to which the Court directed the Government to respond by November 23, 2021, and Ms. Batista to file any reply by December 14, 2021. (See docket entry no. 428.)

The Government is directed to respond to Ms. Batista's November 5 letter in connection with its response to her motion for an indicative ruling. In its response, the Government is directed to address whether, to the extent the Court construes Ms. Batista's letter and motion as a new or renewed motion for a reduction in sentence based on proffered circumstances distinct from those at issue in her prior application, the Court "lacks authority to grant" such a motion "because of an appeal that has been docketed and is pending." Fed. R. Crim. P. 37; see also United States v. Rodriguez, No. 18-CR-49-RJA, 2021 WL 776974, at \*1

(W.D.N.Y. Mar. 1, 2021) (construing application for bail pending appeal as “a new/renewed motion for compassionate release based on changed circumstances,” including the movant’s change of facility and supplemented medical records, and issuing an “indicative ruling that it would grant the motion if the Second Circuit [were to remand] the case for that purpose”).

Ms. Batista’s request for the appointment of counsel remains under advisement.

Chambers will mail a copy of this Order to Ms. Batista.

SO ORDERED.

Dated: New York, New York  
November 12, 2021

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
Chief United States District Judge

**Copy to be mailed to:**

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Tallahassee, FL 32314